

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re ) Case No. 17-14112-B-13  
ARMANDO NATERA, ) DCN: FW-3  
Debtor. )  
\_\_\_\_\_ )

**RULING ON DEBTOR'S MOTION FOR SUMMARY JUDGMENT**

Armando Natera ("Debtor") moves for partial summary judgment for an order: (1) granting this motion for summary judgment; (2) finding the bankruptcy petition was filed at 1:59:28 p.m. on October 25, 2017; (3) finding the automatic stay went into immediate effect; (4) finding the foreclosure sale of real property located at 2430 E. Orrland Avenue, Pixley, CA 93256 ("Property") conducted by Parker Foreclosure Services, LLC ("Parker Foreclosure"), was in violation of the stay; (5) finding the recording of the *Trustee's Deed Upon Sale* ("Trustee's Deed") in favor of Richard Barnes ("Barnes") was a knowing and willful violation of the stay; (6) finding Barnes' conveyance to the Michael Scott Lincicum and Mitzi Lincicum (collectively, the "Lincicums") was a knowing and willful violation of the stay; (7) finding because the original foreclosure sale was void, all acts and conveyances subsequent to the foreclosure sale are void; and (8) denying the motion to retroactively annul the automatic stay (TAT-2). Doc. #115. Debtor submitted a statement of undisputed facts pursuant to ///

1 Local Rule of Practice ("LBR") 7056-1(a) in support of this  
2 motion.

3 Roger S. and Sandra L. Ward (collectively, the "Wards")  
4 timely opposed and submitted their responses to the statement of  
5 undisputed facts. Docs. ##121-22. However, in responding to  
6 Debtor's statement of undisputed facts, the Wards included new  
7 facts numbered 9 through 19 that are purported to be the  
8 undisputed material facts submitted by Debtor, to which the  
9 Wards, in response, do not dispute. Doc. #122. These alleged  
10 undisputed facts were not submitted by Debtor as indicated and  
11 were erroneously attributed to Debtor by the Wards. Accordingly,  
12 the court will STRIKE the Wards' "undisputed facts" numbered 9  
13 through 19 as an insufficient defense, or redundant, immaterial,  
14 impertinent, or scandalous under Fed. R. Civ. P. ("Civ. Rule")  
15 12(f), *as incorporated by* Fed. R. Bankr. P. ("Rule") 7012.

16 Debtor replied. Doc. #144.

17 This motion for summary judgment was originally set for  
18 hearing on October 27, 2021, on 42 days' notice as required by  
19 LBR 7056-1 and in conformance with Rule 7056 and Civ. Rule 56.  
20 Doc. #116. Because the pleadings were not settled in the  
21 parties' related adversary proceeding, this matter was continued  
22 to November 17, 2021, continued to February 9, 2022, then  
23 continued to March 30, 2022, continued again to May 25, 2022,  
24 continued a fifth time to July 27, 2022, and most recently was  
25 continued to September 28, 2022. Docs. ##126-27; ##147-48; #151;  
26 #165; #167; #193; #195; #205; #207; #213; #216. During the most  
27 recent continuance, the court ordered that Debtor may augment  
28 the record not later than August 31, 2022, any party file and

1 serve written opposition not later than September 14, 2022, and  
2 any reply shall be filed and served not later than September 21,  
3 2022. Doc. #216.

4 On August 31, 2022, Debtor submitted on his previously  
5 filed motion, supporting documents, and reply brief, and  
6 indicated that he will not otherwise be augmenting the record.  
7 Doc. #225.

8 At the September 28, 2022, hearing, the court took the  
9 matter under submission. Doc. #237.

10 Debtor and the Wards both request the court take judicial  
11 notice of certain documents filed in this case and Debtor's  
12 related adversary proceeding, Adv. Proc. No. 20-01035. Docs.  
13 #118; #121. The court may take judicial notice of all documents  
14 and other pleadings filed in this bankruptcy case, in the  
15 related adversary proceeding, filings in other court  
16 proceedings, and public records. Fed. R. Evid. 201; *Bank of Am.,*  
17 *N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC)*, 530 B.R.  
18 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial  
19 notice of the requested documents, as well as the pleadings  
20 filed in this bankruptcy case, and Debtor's adversary  
21 proceeding, but not the truth or falsity of such documents as  
22 related to findings of fact. *In re Harmony Holdings, LLC*, 393  
23 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

24  
25 FACTS

26 Debtor filed chapter 13 bankruptcy on October 25, 2017. The  
27 time the petition was filed is in dispute. The petition contains  
28 two timestamps: 1:59:28 p.m. in red ink, and 2:00 p.m. in

1 smaller black ink. Doc. #1. At 2:00 p.m. on that same day,  
2 Parker Foreclosure conducted a foreclosure sale of Property.  
3 Docs. #119, *Exs. A, D*; #122; #123, *Ex. A*. Barnes was the  
4 prevailing bidder.

5 After the petition was filed, Debtor's representative,  
6 Sylvia Gutierrez, spoke by telephone with Donald Parker, Parker  
7 Foreclosure's owner, at 2:03 p.m. and informed him of the  
8 bankruptcy.<sup>1</sup> Docs. #119, *Ex. B*; #122; #123, *Ex. A*. Since the sale  
9 was scheduled for 2:00 p.m., the sale had already occurred by  
10 the time Debtor's counsel's office contacted Parker Foreclosure.  
11 *Id.*

12 The following day, Parker Foreclosure executed a Trustee's  
13 Deed in favor of Barnes. Doc. #119, *Ex. H* to *Ex. C*. Parker  
14 Foreclosure recorded the Trustee's Deed on October 30, 2017, in  
15 the Official Records for Tulare County as Document No. 2017-  
16 0066663 after receiving an email from the Vice President of the  
17 title company stating that it was a legal sale and that the  
18 bankruptcy did not, as a matter of law, prevent the recording of  
19 the Trustee's Deed.<sup>2</sup> Doc. #119, *Ex. H* to *Ex. C*.

20 Parker Foreclosure informed Barnes of the bankruptcy via  
21 facsimile on November 28, 2017 and advised him to obtain a  
22 bankruptcy attorney to seek relief from the automatic stay.  
23

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24 <sup>1</sup> There is a dispute as to whether Donald Parker "refused to take [the  
25 case] number, insisting that he should have been notified before 8:00 a.m. on  
26 the morning of the sale." Doc. #122. Ms. Gutierrez claims that she offered to  
27 email Mr. Parker the case number, but that he refused to provide an email  
address. Doc. #119, *Ex. B*. Barnes claims that Ms. Gutierrez was supposed to  
send Parker Foreclosure a fax, but no fax was received. Doc. #123, *Ex. A*.

28 <sup>2</sup> The Wards claim that Parker Foreclosure recorded the Trustee's Deed  
without "notice of the bankruptcy" because it was recorded only after  
receiving an email from the title company stating that it was a legal sale  
that could go forward. Docs. #122; #123, *Ex. A*.

1 Doc. #119, *Ex. I* to *Ex. D*. Though Barnes "held off for quite  
2 some time" from proceeding with the eviction until the case had  
3 been dismissed, he did not seek relief from the automatic stay  
4 because he believed the sale was legal, allowing him to proceed  
5 with recording the Trustee's Deed. *Id.*, *Ex. D*; *Ex. J* to *Ex. D*;  
6 Docs. #122; #123, *Ex. A*.

7 On January 3, 2018, Debtor's bankruptcy case was dismissed  
8 for failure to timely pay filing fee installment payments.  
9 Doc. #36.

10 Thereafter, Barnes conveyed the Property to the Lincicums  
11 by *Grant Deed* executed March 27, 2018 and recorded in Tulare  
12 County on April 11, 2018. Doc. #119, *Ex. I* to *Ex. E*. The  
13 Lincicums in turn conveyed the Property to the Wards by *Grant*  
14 *Deed* executed June 14, 2018 and recorded in Tulare County on  
15 June 21, 2018. *Id.*, *Ex. J* to *Ex. E*. Barnes claims that neither  
16 the Lincicums nor the Wards knew of the bankruptcy prior to  
17 Debtor's filing of the adversary proceeding. Docs. #122; #123,  
18 *Ex. A*.

19 Debtor reopened this bankruptcy case on June 5, 2020.  
20 Doc. #50. In response to the Wards' motion to annul the  
21 automatic stay, Debtor filed this motion for summary judgment.  
22 Doc. #115.

## 23 24 DISCUSSION

### 25 I. Summary Judgment Standard

26 Under Civ. Rule 56(a), summary judgment should be granted  
27 only if the movant shows that there is no genuine dispute as to  
28 any material fact and that the movant is entitled to judgment as

1 a matter of law. When considering a motion for summary judgment,  
2 facts must be viewed in the light most favorable to the  
3 nonmoving party only if there is a "genuine" dispute as to those  
4 facts. Civ. Rule 56(c); *Scott v. Harris*, 550 U.S. 372, 380, 127  
5 S. Ct. 1769, 1776 (2007). "[T]he mere existence of *some* alleged  
6 factual dispute between the parties will not defeat an otherwise  
7 properly supported motion for summary judgment; the requirement  
8 is that there be no *genuine* issue of *material* fact." *Anderson v.*  
9 *Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505,  
10 2509-10 (1986). When opposing parties tell two different  
11 stories, one of which is blatantly contradicted by the record,  
12 that no reasonable jury could believe, a court should not adopt  
13 that version of the facts for the purposes of ruling on a motion  
14 for summary judgment. *Scott*, 550 U.S. at 380.

15 "Where the record taken as a whole could not lead a  
16 rational trier of fact to find for the nonmoving party, there is  
17 no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v.*  
18 *Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348 (1986).  
19 "As to materiality, the substantive law will identify which  
20 facts are material. Only disputes over facts that might affect  
21 the outcome of the suit under the governing law will properly  
22 preclude the entry of summary judgment." *Anderson*, 477 U.S. at  
23 248, 106 S. Ct. at 2510. "[W]hile the materiality determination  
24 rests on the substantive law, it is the substantive law's  
25 identification of which facts are critical and which facts are  
26 irrelevant that governs." *Ibid*.

27 The movant may not argue that its evidence is the most  
28 persuasive or "explain away" evidence unfavorable to its

1 defenses; rather, it must show that there are no material facts  
2 in dispute, or which can be reasonably resolved by a fact  
3 finder. *Anderson, Id.*, at 250-51, 2511; *Davis v. Team Elec. Co.*,  
4 520 F.3d 1080, 1089 (9th Cir. 2008) ("Summary judgment is not  
5 appropriate" if a reasonable jury *could* find in the plaintiff's  
6 favor.) (emphasis added). The Supreme Court has cautioned that  
7 summary judgment should be denied in a case where there is  
8 reason to believe the better course would be to proceed to a  
9 full trial. *Anderson*, 477 U.S. at 250.

10 As the movant, the burden of proof is on Debtor. The court  
11 must draw all reasonable inferences in the light most favorable  
12 to the non-moving party, and therefore in favor of denying  
13 summary judgment. *Anderson*, 477 U.S. at 255, 106 S. Ct. at 2513-  
14 14. Further, the non-moving party's evidence is to be believed,  
15 and all justifiable inferences are to be drawn in its favor.  
16 *Hutchins v. TNT/Reddaway Truck Line, Inc.*, 939 F. Supp. 721, 723  
17 (N.D. Cal. 1996).

18 If a summary judgment motion is properly submitted, the  
19 burden shifts to the opposing party to rebut with a showing that  
20 there is a genuine issue of material fact. *Henderson v. City of*  
21 *Simi Valley*, 305 F.3d 1052, 1055-56 (9th Cir. 2002). "The  
22 nonmoving party 'may not rely on denials in the pleadings but  
23 must produce specific evidence . . . to show that the dispute  
24 exists.'" *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d  
25 702, 707 (9th Cir. 2008), quoting *Bhan v. NME Hosps., Inc.*, 929  
26 F.2d 1404, 1409 (9th Cir. 1991).

27 Ultimately, the court must grant summary judgment if the  
28 movant shows that the record, taken as a whole, could not lead a

1 rational trier of fact to find for the nonmoving party as to any  
2 fact that might affect the outcome of the suit under the  
3 governing law, and the nonmovant does not meet their burden of  
4 proof to refute the movant's claims.

5 Under Civ. Rule 56(g), if the court does not grant all the  
6 relief requested, the court may enter an order stating any  
7 material fact not genuinely in dispute and treat that fact as  
8 established in the case. Debtor here asks the court to treat as  
9 established several facts. As will be seen, these facts are both  
10 material and genuinely in dispute.

11  
12 II. Material Facts are in Dispute

13 Debtor filed bankruptcy on October 25, 2017, but the  
14 petition has two timestamps on it: the 1:59:28 p.m. in red ink  
15 and 2:00 p.m. in black ink. Wayne Blackwelder, the Clerk of the  
16 Bankruptcy Court, has declared that the red ink timestamp was  
17 affixed by the court upon filing. Doc. #119, *Ex. A*. The Wards  
18 dispute this contention, but it is inappropriate to weigh Mr.  
19 Blackwelder's testimony at the summary judgment stage.  
20 Docs. #122; #123, *Ex. A*; #125. The Wards argue that until  
21 receiving Mr. Blackwelder's declaration in connection with this  
22 motion, the parties had assumed that 2:00 p.m. was the actual  
23 filing time. That may be true, but on the face of the petition,  
24 there is a genuine factual dispute on a material issue: when was  
25 the petition filed? Since the record itself contains conflicting  
26 information, it cannot be said that "no reasonable jury" would  
27 find one time stamp more believable than the other.

28 ///



1 The remainder of this motion relies on the timing of the  
2 filing of the petition. Since the timing in which Debtor filed  
3 the bankruptcy petition is in dispute, the court is unable to:  
4 (1) grant this motion; (2) determine what time the bankruptcy  
5 petition was filed; (3) determine what time the automatic stay  
6 went into effect; (4) determine whether the foreclosure sale of  
7 Property conducted by Parker Foreclosure was in violation of the  
8 automatic stay;<sup>3</sup> (5) determine whether Parker Foreclosure's  
9 recording of the Trustee's Deed in favor of Barnes was a knowing  
10 and willful violation of the stay; (6) determine whether Barnes'  
11 conveyance to the Lincicums was a knowing and willful violation  
12 of the stay; (7) determine whether the original foreclosure sale  
13 was void, as well as all acts and conveyances subsequent to the  
14 foreclosure sale are void; and (8) deny the Wards' motion to  
15 retroactively annul the stay.

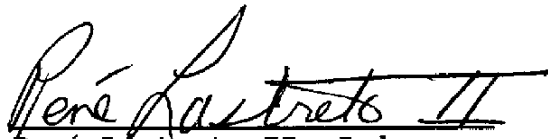
16  
17 CONCLUSION

18 Accordingly, Debtor's motion for summary judgment will be  
19 DENIED on all counts because the timing of the filing of the  
20 petition is in dispute, which is a material fact.

21 Additionally, for the reasons stated above, the court will  
22 STRIKE the Wards' alleged undisputed facts numbered 9 through 19  
23 filed on October 6, 2021, as docket no. 122.

24 **Dated:** Oct 04, 2022

**By the Court**

25  
26   
27 **René Lastreto II, Judge**  
**United States Bankruptcy Court**

28 <sup>3</sup> We also do not have evidence of the time that the foreclosure sale  
actually occurred.

1                   **Instructions to Clerk of Court**  
2                   **Service List - Not Part of Order/Judgment**

3           The Clerk of Court is instructed to send the Order/Judgment  
4 or other court generated document transmitted herewith to the  
5 parties below. The Clerk of Court will send the Order via the  
6 BNC or, if checked \_\_\_\_, via the U.S. mail.

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4 Richard Barnes  
5 Trustee of the Richard Allen Barnes Trust  
6 Dated September 1, 2011  
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9 Donald D. Parker  
10 Parker Foreclosure Services, LLC  
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